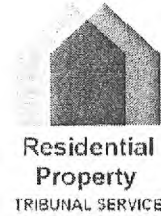


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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

<b>Case Reference:</b>	LON/00AP/LSC/2013/0041
<b>Premises:</b>	Apartment F Copper Beech, 31 North Grove, London N6 4SJ
<b>Applicant:</b>	Copper Beech (Highgate) Residents Association Ltd
<b>Representative:</b>	Ringley Legal Services LLP
<b>Respondent:</b>	Mrs Marianne Kerr
<b>Representative:</b>	N/A
<b>Date of hearing:</b>	20/05/2013
<b>Appearance for Applicant:</b>	Mr Lee Harle (solicitor) and Mr Karl Stephen (legal executive) both of Ringley Legal Services LLP
<b>Appearance for Respondent(s):</b>	Ms Elizabeth Kerr (Respondent's daughter) accompanied by her partner, Mr Mark Harrop (a solicitor)
<b>Leasehold Valuation Tribunal:</b>	Miss J E Guest LLB (solicitor) Mr P Casey MRICS Mrs L West MBA
<b>Date of decision:</b>	20/05/2013

### **Decisions of the Tribunal**

- (1) In view of the agreement reached between the parties, the Tribunal made no determination on the application save in relation to the Respondent's application for costs.
- (2) In relation to the issue of costs, the Tribunal decided that the Applicant is liable to pay the Respondent's costs in the sum of £250.00 pursuant to paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

### **The Application**

1. The Tribunal was required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the payability and/or reasonableness of service charges, administration charges and interest amounting to the sum of £7,344.45.
2. On 25/09/2012, proceedings had been brought in the Northampton County Court by the freeholder, Copper Beech (Highgate) Residents Association Ltd, in relation to alleged arrears of service charges, administration charges and interest amounting to £7,344.45. Following receipt of a Defence form dated 29/10/2012, the claim was transferred to the Clerkenwell and Shoreditch County Court.
3. On 10/01/2013, District Judge Sterlini sitting at Clerkenwell and Shoreditch County Court ordered that the claim be transferred to the Leasehold Valuation Tribunal.
4. The relevant legal provisions are set out in the Appendix to this decision.

### **The Hearing**

5. The Applicant was represented at the hearing by a solicitor, Mr Lee Harle of Ringley Legal Services LLP. Also present on behalf of the Applicant was Mr Karl Stephen, a legal executive also from Ringley Legal Service LLP.
6. The Respondent was represented by her daughter, Ms Elizabeth Kerr. The Tribunal was informed by Ms Kerr that the Respondent suffered from physical health problems and she would not be in a position to attend the Tribunal for the foreseeable future. Ms Kerr confirmed that she had authority to act on her mother's behalf. Ms Kerr was accompanied by her partner, Mr Mark Harrop. Mr Harrop told the Tribunal that he was a solicitor but he was present to provide Ms Kerr with moral support and he was not representing the Respondent or Ms Kerr in any professional capacity.
7. The Tribunal observed that the Applicant was in breach of the directions order in a number of respects. The Applicant had not fully particularised its claim nor had it served its supporting evidence. Further, the Applicant only provided the Tribunal and the Respondent's representative with a bundle of documents at the start of the hearing. Given this, the Tribunal had to order a short adjournment in order to give the Tribunal and the Respondent an opportunity to consider the Applicant's bundle of documents. During this adjournment, the parties were able to reach an agreement. The terms of the agreement are set out in the document signed on behalf of both parties that is annexed to this decision. The parties had reached an agreement on all issues to be considered by the Tribunal save for the issue of the costs of the proceedings before the Tribunal.

8. An application was made on behalf of the Respondent for costs to be awarded against the Applicant. The Tribunal was informed that efforts had been made by Ms Kerr and solicitors instructed on behalf of the Respondent, Anthony Gold solicitors, to resolve the dispute but that the Applicant's representatives had failed to respond until the evening of the last working day prior to the hearing when an offer was put on behalf of the Respondent in identical terms to that agreed during the adjournment of the hearing. Ms Kerr explained to the Tribunal that it had not been possible to make an offer at an earlier stage as the Applicant had not provided service charge accounts for the period 2010 to 2012 until 13/05/2013 and even then attempts made to engage the Applicant in negotiations had been unsuccessful.
9. The Applicant apologised for its failure to comply with the directions order. Mr Harle explained that there had been delay finalising accounts as the Applicant had delayed filing audited accounts at Companies House whilst it tried to alter its filing terms with the Financial Services Authority ("FSA"). He was also expecting the solicitor from Anthony Gold to be present at the hearing so that the negotiations commenced in the evening of the last working day prior to the hearing could continue.
10. The Tribunal was told that Ms Kerr was self-employed and that she had lost one day's income amounting to £200.00 by reason of the fact that she had to attend the hearing. Mr Harrop said that he was employed and he had taken a day's leave to accompany Ms Kerr. Mr Harrop estimated that his day's leave amounted to £200.00. The Tribunal was informed that time had also been spent preparing for the hearing, producing documents, a bundle for the hearing, etc.

#### **Tribunal's decision**

11. There was a complete failure by the Applicant to adhere to the terms of the directions order. A supplemental statement of case was served by the Applicant on 26/04/2013. This was not only out of time but failed to particularise the claim as required by the directions.
12. The Tribunal did not accept the Applicant's explanation of the reason for the delay. The lease places specific obligations on the Applicant to have its accounts audited and certified by a chartered accountant and for the certified account to be served as soon as practicable with a notice in writing specifying the total and proportionate amounts (see clauses 7, 8 and 9 to the Seventh Schedule of the lease). This contractual obligation under the lease is unaffected by any dealings the Applicant may have with Companies House and the FSA.
13. The Tribunal accepted Ms Kerr's evidence regarding the attempts she had made to engage with the Applicant when the required information had, albeit belatedly, been provided by the Applicant.
14. It was clear to the Tribunal that the hearing could have been avoided if the Applicant had complied with the directions. The Applicant, instead, chose to disregard the directions order. This was evidenced by the Applicant's failure to even notify the Tribunal as to why it was not in a position to comply with the directions. This left the Tribunal completely without any information regarding the claim.

15. The Tribunal regarded the Applicant's conduct as unreasonable. The Tribunal, therefore, considered that it was appropriate to make a costs order under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002.
16. The Tribunal decided to award costs in the sum of £250.00. The Tribunal considered that Ms Kerr's attendance could have been avoided if the Applicant had properly engaged in the proceedings. The Tribunal determined that Ms Kerr's lost income of £200.00 should be recovered. In addition, the Tribunal awarded a further £50.00 to reflect her incidental costs and expenses in dealing with the proceedings at the LVT.
17. The Tribunal did not, however, agree that the Respondent was entitled to recover the expenses incurred by Mr Harrop. Mr Harrop is not a party to the proceedings and he had not been engaged as the Respondent's solicitor. Mr Harrop's role was to provide assistance to his partner and it was not considered that any losses he may have incurred were recoverable from the Applicant.

**Next steps**

18. The Respondent intends to pursue a counterclaim for disrepair within the County Court proceedings. This matter will now duly be remitted back to Clerkenwell and County Court.

Chair: Miss J E Guest

Date:28/05/2005

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and

- (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
  - (a) has been agreed or admitted by the Tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

**Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

**Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (c) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  - (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (e) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

**Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

**Commonhold and Leasehold Reform Act 2002**

**Schedule 11, paragraph 1**

- (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  - (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or
  - (b) on particular evidence,



of any question which may be the subject matter of an application under sub-paragraph (1).

**Schedule 12, paragraph 10**

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
  - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
  - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
  - (a) £500, or
  - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.